Creditor Rights: The Final Word on the Single-Business-Enterprise Theory of Liability

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Your client is frustrated and angry. He or she is owed money, but the debtor will not pay. In fact, the debtor is ignoring your client, which makes your client even angrier. You run an asset search and cannot find any assets that the debtor owns. But you find a related company that has plenty of assets against which you can execute. You do more research and find that the two companies share offices, employees, and officers—they even share an accounting department. Your client wants you to go after the assets of the related company. What do you tell your client?

A recent Texas Supreme Court decision gives some guidance. *SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444 (Tex. 2008). The Court held that corporations cannot be held liable for each other's obligations merely because they are part of a single business enterprise. *Id*. at 456. In other words, the single-business-enterprise theory is not a viable theory of liability under Texas law.

The facts and procedural history of the case are insightful. The parents of a five-year-old boy killed in a house fire sued two entities, SSP Partners and Gladstrong Investments (USA) Corp., claiming that a lighter's child-resistant mechanism was defective. *Id.* at 447. All defendants settled before trial. *Id.* SSP then sought indemnity from Gladstrong. *Id.* One of SSP's more creative theories was that Gladstrong operated as a single business enterprise with the manufacturer and, therefore, should be held liable with the manufacturer under Chapter 82 ("Products Liability") of the Texas Civil Practice and Remedies Code. *Id.* at 448. The trial court, however, granted Gladstrong's motion for summary judgment, finding that it was not liable under any of SSP's theories. *Id.* The Corpus Christi Court of Appeals agreed with the trial court and held that one entity cannot be liable as part of single business enterprise if the other entities in the enterprise are not parties to the case. *Id.* at 449. The appellate court, however, reversed and remanded the case on other grounds. *Id.* Both SSP and Gladstrong petitioned the Texas Supreme Court to review the case. *Id*.

On appeal to the Texas Supreme Court, SSP cited the decision *Paramount Petroleum Corp. v. Taylor Rental Ctr.,* 712 S.W.2d 534 (Tex. App–Houston [14th Dist.] 1986, writ ref'd n.r.e.), to support its argument for the single-business-enterprise theory. *SSP Partners,* 275 S.W.3d at 450. The appellate court in *Paramount* affirmed the trial court's judgment, which held one company liable for another company's debts based on the single-business-enterprise theory of liability. *Id.* at 453. The court cited the usual factors for determining a single business enterprise, including

- common employees;
- common offices;
- centralized accounting;
- payment of wages by one corporation to another corporation's employees;
- common business name;
- services rendered by the employees of one corporation on behalf of another corporation;
- undocumented transfers of funds between corporations; and
- unclear allocations of profits and losses between corporations

Id. at 450-51. SSP argued that it had offered evidence of all of these same factors. *Id*. at 451.

The Texas Supreme Court, however, noted that it had never approved of imposing joint liability on separate entities merely because they were part of a single business enterprise, and it also pointed out that it had previously called into question whether the single-business-enterprise theory is even needed under Texas law. *Id.* at 452. The Court distinguished cases cited by the Houston Court of Appeals in *Paramount Petroleum* in support of the single-business-enterprise theory as either being taken out of context or as relying on other theories besides the single-business-enterprise theory. *Id.* at 452-54. The Court noted the strict approach that Article 2.21 ("Liability of Subscribers and Shareholders") of the Texas Business Corporation Act takes in disregarding the corporate structure. *Id.* at 455-56. Thus, the Court found that the single-business-enterprise theory of liability is fundamentally inconsistent with the approach taken by the legislature in article 2.21 and will not support liability in Texas. *Id.* at 456. Since the Court has issued its holding, a number of federal and state courts have cited SSP as holding that the single-business-enterprise theory no longer exists in Texas.[1]

But there is hope. The Texas Supreme Court has not eliminated all possibility of holding related companies liable for each other's debts. In *SSP*, the Court specifically noted the theory of alter-ego liability. *Id*. at 451-52. It also mentioned joint-enterprise liability and partnership by estoppel. *Id.* at 451-52, 454. In addition, fraudulent-transfer liability, forfeiture of corporate form, and exceptions to the fiduciary-shield doctrine may be possibilities for expanding the number of defendants. As a result, there are still causes of action for helping creditors expand the pool of available assets, but the single-business-enterprise theory is not one of them.

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[1] *See, e.g., Dick's Last Resort of W. End, Inc. v. Market/Ross, Ltd.*, 273 S.W.3d 905, 907 n.1 (Tex. App.–Dallas 2008, pet. filed); *Lincoln Gen. Ins. Co. v. US Auto Ins. Servs., Inc.,* No. 3:07-CV-1985-B, 2009 WL 1174641. at *4 (N.D. Tex. April 29, 2009); *Nichols v. YJ USA Corp.,* No. 3:06-CV-02366-L, 2009 WL 722997, at *8 (N.D. Tex. Mar. 18, 2009); *In re Heritage Org., L.L.C.,* No. 04-35574-BJH-11, 2008 WL 5215688, at *21 (Bankr. N.D. Tex. Dec. 12, 2008).